rightly so, that there is no doctrine of merger but he submits that the word "claim" in section 4(4) of the High Court (Admiralty Jurisdiction) Act must be intended by the legislature to mean "maritime claim" and that the Act contemplates the arrest of only one ship in respect of one maritime claim so that Choor Singh J. was correct in holding that the appellants had only one maritime claim in respect of all sums due under the charterparty. He submits that in section 4(4) there is a distinction between the expression "claim" and the expression "cause of action". Mr. Thomas contends that these two expressions must have the same meaning and that the word "maritime" is not found in the Act. He contends that the arrests of the "Permina 108" and the "Permina Samudra XIV" were in respect of two claims, each of which arises out of the list in section 3(1) and each of which is founded on a different cause of action as appears in the two statements of claim. He contends that if Mr. Stone is correct it would lead to injustice. On the facts of the present case it is conceded that the appellants could have issued separate writs *in rem* each time an instalment was not paid when due and in respect of each action a ship could be arrested. But where the appellants, as now, did not institute proceedings on each failure to pay an instalment and thus gives the respondents an indulgence, Mr. Stone says that the appellants can institute only one action *in rem* and thus can arrest only one ship because there is only one claim, even though they have more than one cause of action against the respondents.

We accept Mr. Thomas' contention and on the facts before us and before Choor Singh J. we are of the opinion that the appellants were entitled to arrest the "Permina Samudra XIV".

In our opinion, *"Monte Ulia (Owners)* v. *Banco and Others (Owners); The Banco," supra,* is distinguishable. In that case it was decided that where there is a claim based on a single cause of action, the jurisdiction *in rem* cannot be invoked by a single writ addressed to and served upon more than one vessel whereas in the present case the facts are that two separate writs have been issued based on separate and distinct causes of action and each writ names only one ship and has been served on only one ship, the ship named in the writ.

Accordingly, the appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *Rodyk & Davidson; Selvadurai & Emmanuel.*

THE "PERMINA 108"; OWNERS OF "PERMINA 108" v. MARTROPICO COMPANIA NAVIERA S.A.

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) November 26, 1976]

[Singapore — Civil Appeal No. 31 of 1976]

Shipping Law — Action in rem against ship — Arrest of ship — Non-payment of charter hire under charterparty in respect of another ship — Motion to set aside action in rem and warrant of arrest — Admiralty jurisdiction of High Court — High Court (Admiralty Jurisdiction) Act (Cap. 6), ss. 3 and 4.

In this case the respondents had a claim for non-payment of the charter hire due under a charter party in respect of a vessel *"Ibnu"* which was owned by the respondents. The respondents brought proceedings *in rem* against the *"Permina 108"* which belonged to the appellants and the ship was seized under a warrant of arrest. The appellants applied to the High Court to set aside the writ in rem and the warrant of arrest against the ship but this application was dismissed by Choor Singh J. (*ante* p. 43). The appellants appealed to the Court of Appeal. It was argued that the respondents were not entitled to bring proceedings *in rem* against the *"Permina 108"* because the claim asserted in relation to the charter of the *"Ibnu"* has no connection with the "Permina *108"*, even if owned by the appellants.

Held, dismissing the appeal; (1) on the true construction of section 4(4) of the High Court (Admiralty Jurisdiction) Act, a ship to be liable to arrest must be (a) the ship in connection with which the claim made in the action arose, if at the time when the action is brought it is the property of the defendant to the action, the defendant being the person who would be liable on the claim in an action in possession and who was either the owner or charterer of or in possession or control of the ship at the time when the cause of action arose; or (b) any other ship which at the time when the action is brought, is the property of the person liable in possession and who at the time when the cause of action arose, was either the owner or charterer of, or in possession of or in control of the ship with which the claim arose;

(2) in this case the respondents were entitled to invoke the admiralty jurisdiction of the High Court against the *"Permina 108"* which on the undisputed facts was beneficially owned at the date of the issue of the writ by the respondents, who were the charterers of the *"Ibnu"* the ship in connection with which the appellants' claim arose and who also were the persons liable in respect of the claim;

(3) the learned trial judge was therefore correct in dismissing the appellant's motion to set aside the writ and the warrant of arrest of *'Permina 108"*.

[Editorial Note: The Court of Appeal on January 20 allowed the appellants leave to appeal to the Privy Council].

Cases referred to:-

(1) *Salomon* v. *Commissioners of Customs and Excise* [1967] 2 Q.B. 116, 143.

(2) *The Eschersheim* [1976] 1 W.L.R. 339, 436.

COURT OF APPEAL.

Richard Stone Q.C. (*S. Selvadurai* with him) for the appellants.

Michael David Thomas Q.C. (*C. Arul* with him) for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): This is an appeal from a judgment of Choor Singh J. dated August 25, 1976 dismissing a motion taken out by the appellants, the owners of the ship or vessel "Permina 108" to set aside a writ *in rem* and a warrant of arrest directed against their ship "Permina 108".

The "Permina 108" was arrested by the respondents, Martropico Compania Naviera S.A in respect

of a claim, stated in the endorsement of the writ to be a claim for non-payment of the charter hire due under a charterparty dated the 1st day of September, 1970 in respect of the vessel "Ibnu" which is owned by the respondents.

According to an affidavit sworn by the general manager of the agents in Singapore for the respondents it appears that as at July 22, 1976 there was due and owing by the appellants to the respondents US$7,230,711.48 by way of unpaid charter hire in respect of the vessel "Ibnu" which was chartered by the appellants from the respondents under a charterparty dated the 1st day of September, 1970. It is not in dispute that the charterparty is a time-charterparty and that the charter hire is to be paid monthly. It is agreed that for the purposes of the Motion the appellants are the owners of the "Permina 108".

The appellants' case is that the respondents are not entitled to bring proceedings *in rem* against the "Permina 108" because the claim asserted in relation to the charter of the "Ibnu" has no connection with the "Permina 108", even if owned by the appellants.

The admiralty jurisdiction of the High Court is statutory and is defined by section 3(1) of the High Court (Admiralty Jurisdiction) Act, (Cap. 6) in terms which, so far as relevant to the present appeal, are as follows:—

"The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:—

(h) any claim arising out of any agreement relating to... the use or hire of a ship."

... ...

The mode of exercise of such admiralty jurisdiction is prescribed by section 4 of the Act, the relevant provisions of which are as follows: —

"4.—(1) Subject to the provisions of section 5 of this Act the admiralty jurisdiction of the court may in all cases be invoked by an action in personam.

... ...

(4) In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) to section 3 of this Act, being a claim in connection with a ship, where the person who would have been liable in an action in personam was, when the cause of action arose, the owner or charterer or person in possession or in control of, the ship, the admiralty jurisdiction of the court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against —

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

The decision of this appeal turns on the construction of section 4(4).

The appellants' main contention is that on the proper construction of section 4(4) of the Act a ship, to be liable to arrest must, under clause (a), be the ship in connection with which the claim made in the action arose and which, at the time when the action is brought, is beneficially owned by the defendant to the action; or, under clause (b), any other ship which, at the time when the action is brought, is beneficially owned by the person who is the beneficial owner of the ship in connection with which the claim made in the action arose. The construction of clause (a) presents no difficulty. Its meaning is clear and there is no dispute as to its meaning. The ship that is liable to arrest is "that ship" which is beyond doubt the ship in connection with which the claim arose.

The construction of clause (b) is seriously in dispute. Both Mr. Stone for the appellants and Mr. Thomas for the respondents contend that the meaning of clause (b) is plain and unambiguous although each gives to that clause a different meaning. Mr. Stone says, giving the expression "as aforesaid" its ordinary meaning, that it means "as respects all the shares therein by that person". So far Mr. Stone is obviously correct and Mr. Thomas is in agreement. Mr. Stone goes on to say that the words "that person" clearly refers back to the expression "that person" in clause (a). Again, Mr. Stone is clearly correct and Mr. Thomas is again in agreement. Next, Mr. Stone says that the expression "that person "clearly refers to the person who must not only be the person liable *in personam* but must also be the person who is the beneficial owner of "that ship" *i.e.* the ship in connection with which the claim made in the action arose. This construction Mr. Thomas disputes. Mr. Thomas says the expression "that person" refers back to the person described in the earlier part of the subsection and clearly refers to the person liable *in personam*, who need not also be the beneficial owner of "the ship" in connection with which the claim arose.

In our opinion the terms of section 4(4) of the Act, giving them their plain and ordinary meaning are free of any ambiguity and are not reasonably capable of more than one meaning. It follows that it is unnecessary and indeed it would be wrong to look at the International Convention Relating to the Arrest of Seagoing Ships signed at Brussels in 1952 to arrive at the proper construction of our subsection (see *Salomon* v. *Commissioners of Customs & Excise*).[1] Furthermore, Singapore, even when it was a colony of the United Kingdom, was not one of the colonies to which the United Kingdom had under Article 18 extended the Convention and since independence Singapore has not acceded under Article 15 to the Convention.

In our judgment, on the true construction of section 4(4) of the Act, a ship to be liable to arrest must be —

(a) The ship in connection with which the claim (being a claim under paragraphs (d) to (q) of section 3(1)) made in the action arose, if at the time when the action is brought it is the property of the defendant to the action, the defendant being the person who would be liable on the claim in an action *in personam* and who was either the owner or charterer of or in possession or in control of, the ship, at the time when the cause of action arose; or

(b) any other ship which, at the time when the action is brought, is the property of the person liable *in personam* and who, at the time when the cause of action arose, was either the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose.

We have arrived at this construction of the subsection notwithstanding a passage in the speech of

Lord Diplock in the House of Lords which was strongly relied on by Mr. Stone. That passage is to be found in *The Eschersheim*,[2] which reads: —

"In England the matter is governed by section 3(4) of the Act which reads as follows: —

> 'In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection (1) of section one of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court... may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against — (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid.'

It is clear that to be liable to arrest a ship must not only be the property of the defendant to the action but must also be identifiable as the ship in connection with which the claim made in the action arose (or a sister ship of that ship). The nature of the 'connection' between the ship and the claim must have been intended to be the same as is expressed in the corresponding phrase in the Convention 'the particular ship in respect of which the maritime claim arose.' One must therefore look at the description of each of the maritime claims included in the list in order to identify the particular ship in respect of which a claim of that description could arise."

It is clear in the context of this passage that the words "that ship" in the expression "or a sister ship of that ship" refers to the ship in the earlier part of the sentence so that Lord Diplock is saying that to be liable to arrest under clause (b) a ship must be in the same ownership as the ship in connection with which the claim made in the action arose.

Mr. Stone concedes that Lord Diplock's comments on the class of ships liable to arrest were not part of the *ratio decidendi* and that the construction of section 3(4) of the Administration of Justice Act, 1956, which is *in pari materia* with our section 4(4), was not dealt with in argument before the House of Lords. It is also, in our opinion, plain, having regard to the facts and the issues raised, that in this passage of his speech Lord Diplock was comparing the United Kingdom Act with the Brussels Convention so as to identify, in connection with which a claim under section 1(1) of the United Kingdom Act arose, the particular ship which is liable to arrest under clause (a) and was not particularly concerned with construing clause (b). It is also clear from his speech that he considered the terms of the Brussels Convention were relevant in construing the provisions of the United Kingdom Act. We, therefore, find ourselves unable to agree with the construction which Lord Diplock has given to clause (b).

In our judgment, the construction we have given to clause (b) of section 4(4) of the Act is in accord with the other provisions of the Act. Where there is a maritime lien, section 4(3) enables a plaintiff to invoke the Admiralty jurisdiction against the ship in connection with which the claim arose, whether or not at the time when the action is brought, it remains in the same ownership. Whether or not there is a maritime lien, in a claim under paragraphs (d) to (q) of section 3(1), section 4(4) enables the plaintiff to invoke the Admiralty jurisdiction against the ship in connection with which the claim arose, if at the time when the action is brought, it is in the ownership of the person who would be liable on the claim *in personam* and who was, when the cause of action arose, the owner or the charterer of, or in possession or control of, it; or against any other ship, if at the time when the action is brought, that other ship is beneficially owned by the person liable on the claim *in personam* and who was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship in connection with which the claim arose.

The other contention of Mr. Stone is that the word "charterer" in section 4(4) should be limited to mean "charterer by demise" only. We are unable to accept that contention because such a construction would cut down considerably the ordinary meaning of the word "charterer". In our opinion if the legislature had intended to limit the operation of the subsection to, amongst others, the charterer by demise only and not other types of charterers it would have expressly added the words "by demise" after the word "charterer".

For all these reasons we are of the opinion that Choor Singh J. was correct in dismissing the appellants' motion to set aside the writ and the warrant of arrest of the "Permina 108". In our judgment the respondents are entitled to invoke the Admiralty jurisdiction of the High Court against the "Permina 108" which, on the undisputed facts, is beneficially owned at the date of the issue of the writ by the respondents, who are the charterers of the "Ibnu", the ship in connection with which the appellants' claim arose, and who also are the persons liable *in personam* on the claim.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Selvadurai & Emmanuel; Rodyk & Davidson.*